

CHAPTER 2

EDUCATION - UNIVERSITIES AND COLLEGES

HOUSE BILL 04-1007

BY REPRESENTATIVE(S) Williams T., Coleman, Rhodes, McGihon, Pommer, and Vigil;
also SENATOR(S) Takis, Anderson, Taylor, and Tupa.

AN ACT

**CONCERNING THE OBLIGATIONS OF A GOVERNING BODY OF AN INSTITUTION OF HIGHER EDUCATION
THAT ESTABLISHES AN OPTIONAL RETIREMENT PLAN.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 54.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-54.5-104.5. Selection of fund sponsors - responsibilities and fiduciary duties of a governing board. (1) EACH GOVERNING BOARD THAT ESTABLISHES AN OPTIONAL RETIREMENT PLAN PURSUANT TO THIS ARTICLE SHALL ESTABLISH A FORMAL PROCESS FOR SELECTING COMPANIES TO ACT AS FUND SPONSORS FROM WHICH PARTICIPANTS IN THE PLAN MAY SELECT INVESTMENT ALTERNATIVES. THE SELECTION PROCESS SHALL INCLUDE THE FOLLOWING REQUIREMENTS:

(a) PARTICIPANTS IN THE PLAN SHALL HAVE ACCESS TO INVESTMENT ALTERNATIVES HAVING A RANGE OF RISK, BENEFITS, AND COST.

(b) THE GOVERNING BODY SHALL HAVE THE ABILITY TO MONITOR THE FUND SPONSOR'S PERFORMANCE OF OBLIGATIONS UNDER ANY CONTRACT RELATED TO THE PLAN, INCLUDING BUT NOT LIMITED TO THE RETURNS EARNED ON EACH INVESTMENT ALTERNATIVE OR POOL AND THE TOTAL FEES AND EXPENSES CHARGED.

(c) THE GOVERNING BOARD SHALL CONDUCT A PERIODIC REVIEW OF THE FINANCIAL VIABILITY AND ATTRACTIVENESS OF COMBINING ANY OPTIONAL RETIREMENT PLAN ESTABLISHED BY THE GOVERNING BOARD WITH THE PLANS OF OTHER GOVERNING BOARDS ESTABLISHED PURSUANT TO THIS ARTICLE.

(d) THE GOVERNING BOARD SHALL PERIODICALLY REVIEW EACH FUND SPONSOR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

FROM WHICH PARTICIPANTS MAY SELECT INVESTMENT ALTERNATIVES AND COMPARE THE SPONSOR'S PERFORMANCE TO OTHER SPONSORS OF OPTIONAL RETIREMENT PLANS AVAILABLE TO PUBLIC EMPLOYEES IN THE STATE. PERIODIC REVIEWS OF A FUND SPONSOR MAY BE CONDUCTED BY A STANDING COMMITTEE OF A GOVERNING BOARD, INSTITUTIONAL COMMITTEE OR PERSONNEL, OR EXTERNAL AUDITORS OR BENEFITS CONSULTANTS AS DETERMINED BY EACH GOVERNING BOARD. A FULL REPORT BY ANY SUCH COMMITTEE SHALL BE PROVIDED TO EACH MEMBER OF THE GOVERNING BOARD. NOTHING IN THIS SUBSECTION (1) SHALL PROHIBIT A PERIODIC REVIEW FROM BEING CONDUCTED INDEPENDENTLY OR IN COOPERATION WITH OTHERS.

(2) AS LONG AS A GOVERNING BOARD COMPLIES WITH THE REQUIREMENTS SET FORTH IN SUBSECTION (1) OF THIS SECTION, IT SHALL BE DEEMED TO HAVE MET ITS RESPONSIBILITIES AND FIDUCIARY DUTIES WITH RESPECT TO ANY OPTIONAL RETIREMENT PLAN IT HAS ESTABLISHED, AND THE GOVERNING BOARD, ITS MEMBERS, AGENTS, EMPLOYEES, AND PLAN ADMINISTRATORS SHALL HAVE NO LIABILITY WHATSOEVER TO PARTICIPANTS IN THE PLAN.

(3) THE REQUIREMENTS SET FORTH IN THIS SECTION SHALL CONSTITUTE THE APPROPRIATE STANDARD FOR EACH GOVERNING BOARD THAT ESTABLISHES AN OPTIONAL RETIREMENT PLAN FOR PURPOSES OF SECTION 15-1.1-115, C.R.S., AND SHALL SUPERSEDE THE PROVISIONS OF ARTICLE 1.1 OF TITLE 15, C.R.S.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: February 20, 2004